

CLERKS OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED
June 7, 2018

JULIA C. DUDLEY, CLERK
BY: /s/ J. JONES
DEPUTY CLERK

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

Brothers Franchising & Development, LLC,

Plaintiff,

v.

Civil Action No. 3:18-cv-00039

Brother's Bar & Grill LLC,

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

Plaintiff Brothers Franchising & Development, LLC, a Wisconsin limited liability company, ("Plaintiff"), by and through its undersigned attorneys, for its Complaint against Defendant Brother's Bar & Grill LLC, a Virginia limited liability company, ("Defendant"), states as follows:

PARTIES

1. Plaintiff is a Wisconsin limited liability corporation having a principal place of business at 308 South Third Street, La Crosse, Wisconsin 54601.
2. Defendant is a Virginia limited liability company having a principal place of business at 2401 Angus Road, Charlottesville, Virginia 22901.

JURISDICTION AND VENUE

3. This is an action for trademark infringement in violation of section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114; unfair competition in violation of section 43(a) of

the Lanham Act, 15 U.S.C. § 1125; trademark infringement in violation of the Virginia Trademark and Service Mark Act, VA. CODE ANN. §59.1-92.12; and unfair competition in violation of Virginia common law.

4. This Court has jurisdiction under 15 U.S.C. § 1121; 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) because the Defendant resides in this District and a substantial part of the events giving rise to the claims occurred in this District. Among other things, Defendant has engaged in acts of trademark infringement in this District.

BACKGROUND

6. Plaintiff owns and operates a franchise of bars and restaurants across the country and currently has nineteen locations in Indiana, Illinois, Ohio, Colorado, Wisconsin, Iowa, Kansas, Nebraska, Minnesota, and Kentucky.

7. Plaintiff has filed for and obtained six federal trademark registrations, including: BROTHERS BAR & GRILL (Reg. No. 4029137); BROTHERS (Reg. No. 4738963); BROTHERS EST. 1967 (Reg. No. 2644083); BROTHERS EST. 1967 (Reg. No. 2644084); IT'S BROTHERS EST. 1967 (Reg. No. 2358395); and IT'S BROTHERS (Reg. No. 2414423) (collectively, the “BROTHERS Marks”). The registrations for the BROTHERS Marks are attached hereto as Exhibit A.

8. Of the BROTHERS Marks, the following marks are incontestable: BROTHERS BAR & GRILL (Reg. No. 4029137); BROTHERS EST. 1967 (Reg. No.

2644083); BROTHERS EST. 1967 (Reg. No. 2644084); IT'S BROTHERS EST. 1967 (Reg. No. 2358395); IT'S BROTHERS (Reg. No. 2414423).

9. Plaintiff first used the BROTHERS Marks in commerce in the early 1990s, with the earliest first use date of August 16, 1990 for BROTHERS BAR & GRILL (Reg. No. 4029137) and BROTHERS (Reg. No. 4738963).

10. Plaintiff has used the BROTHERS Marks in commerce continuously since each Mark's respective date of first use in commerce.

11. Plaintiff expends substantial funds in advertising its bar and restaurant services under the BROTHERS Marks. As a result of this substantial spending and 28 years of continuous use, Plaintiff has grown the goodwill and recognition of the BROTHERS Marks. The BROTHERS Marks are highly valuable assets representing substantial goodwill.

12. As a result of its federal registrations, Plaintiff is entitled to exclusive nationwide rights in the BROTHERS Marks.

13. Plaintiff is actively engaging in business planning to use the BROTHERS Marks on and in connection with new bars and restaurants on and around the East Coast of the United States.

14. Plaintiff maintains a website that promotes and advertises its bars and restaurants. The website, www.brothersbar.com, is accessible nationwide and features several of the BROTHERS Marks. Plaintiff owns the domain name www.brothersbar.com.

15. Without authorization from Plaintiff, Defendant began using the trade name "Brother's Bar & Grill," in commerce, including use in Charlottesville, Virginia for marketing, promoting, and selling its bar and restaurant services.

16. On information and belief, Defendant owns the domain name www.brothersbarandgrillva.com. This domain name is directed to a website that displays the BROTHERS Marks in connection with the advertisement and promotion of Defendant's bar and restaurant services. A partial screenshot captured May 29, 2018 from the www.brothersbarandgrillva.com website is attached as Exhibit B and is incorporated by reference.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT
UNDER SECTION 32(a) OF THE LANHAM ACT, 15 U.S.C. §1114

17. Plaintiff realleges by reference the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. The BROTHERS Marks are valid and enforceable trademarks under federal law.

19. Defendant is using the BROTHERS Marks in commerce without authorization from Plaintiff.

20. Defendant's wrongful use of the BROTHERS Marks includes, but is not limited to, use of the domain name www.brothersbarandgrillva.com, use of the BROTHERS Marks on Defendant's website, and all other uses of the BROTHERS Marks

in connection with promoting, advertising, or identifying Defendant's bar and restaurant services.

21. Defendant's use of the BROTHERS Marks is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant's services or as to Defendant's affiliation, connection, approval or association with Plaintiff.

22. Defendant's actions constitute trademark infringement in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

23. Defendant's trademark infringement has caused and will continue to cause Plaintiff to suffer damage to its business, reputation, goodwill, profits, and the strength of its trademarks, and is causing ongoing irreparable harm to Plaintiff for which there is no adequate remedy at law.

24. Defendant's infringement of the BROTHERS Marks is willful and deliberate.

25. Plaintiff has suffered damages as a result of Defendant's conduct in an amount to be proven at trial.

COUNT II
FEDERAL UNFAIR COMPETITION UNDER SECTION 43(a) OF THE
LANHAM ACT, 15 U.S.C. § 1125(a)

26. Plaintiff realleges by reference the allegations contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Defendant is using the BROTHERS Marks in commerce without authorization from Plaintiff.

28. Defendant's wrongful use of the BROTHERS Marks includes, but is not limited to, use of the domain name www.brothersbarandgrillva.com, use of the BROTHERS Marks on Defendant's website, and all other uses of the BROTHERS Marks in connection with promoting, advertising, or identifying Defendant's bar and restaurant services.

29. Defendant's actions set forth above are calculated to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant's services or as to Defendant's affiliation, connection, approval or association with Plaintiff.

30. Defendant's actions constitute unfair competition in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

31. Defendant's unfair competition has caused and will continue to cause Plaintiff to suffer damage to its business, reputation, good will, profits, and the strength of its trademarks, and is causing ongoing irreparable harm to Plaintiff for which there is no adequate remedy at law.

32. Defendant's actions constituting unfair competition are willful and deliberate.

33. Plaintiff has suffered damages as a result of Defendant's conduct in an amount to be proven at trial.

COUNT III
TRADEMARK INFRINGEMENT UNDER VA. CODE ANN. §59.1-92.12

34. Plaintiff realleges by reference the allegations contained in paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Defendant's wrongful use of the BROTHERS Marks includes, but is not limited to, use of the domain name www.brothersbarandgrillva.com, use of the BROTHERS Marks on Defendant's website, and all other uses of the BROTHERS Marks in connection with promoting, advertising, or identifying Defendant's bar and restaurant services.

36. Defendant is using the BROTHERS Marks to advertise and promote its bar and restaurant services without authorization from Plaintiff, in a manner that is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant's services or as to Defendant's affiliation, connection, approval or association with Plaintiff.

37. Defendant's actions constitute trademark infringement in violation of the Virginia Trademark and Service Mark Act, VA. CODE ANN. §59.1-92.12.

38. Defendant's actions constituting infringement of the BROTHERS Marks are willful and deliberate.

39. Plaintiff has suffered damages as a result of Defendant's conduct in an amount to be proven at trial.

40. Defendant's infringing actions entitle Plaintiff to statutory damages pursuant to VA. CODE ANN. §59.1-92.13.

COUNT IV
COMMON LAW UNFAIR COMPETITION

41. Plaintiff realleges by reference the allegations contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. Defendant's wrongful use of the BROTHERS Marks includes, but is not limited to, use of the domain name www.brothersbarandgrillva.com, use of the BROTHERS Marks on Defendant's website, and all other uses of the BROTHERS Marks in connection with promoting, advertising, or identifying Defendant's bar and restaurant services.

43. Defendant's actions set forth above are calculated to cause confusion, to cause mistake, and/or to deceive as to the source of origin or affiliation of Defendant's goods and services.

44. Defendant's actions constitute unfair competition under the common law of Virginia.

45. Plaintiff has been irreparably injured and will continue to be irreparably injured unless the conduct of Defendant is preliminarily and permanently enjoined.

46. Plaintiff has suffered damages as a result of Defendant's conduct in an amount to be proven at trial.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Preliminarily and permanently enjoin Defendant, its agents, servants, employees, privies, successors, and assigns, and all those in active concert or participation with any of the aforementioned entities or individuals, from using any of the BROTHERS Marks or any trademarks or tradenames confusingly similar to the BROTHERS Marks on or in connection with bar or restaurant services, including without limitation on or in connection with any food or beverage products;
- B. Enter judgment for Plaintiff on all claims for relief asserted in the Complaint in an amount to be proven at trial, including all pre-judgement and post-judgment interest allowed by law;
- C. Order Defendant to surrender to Plaintiff the domain name www.brothersbarandgrillva.com;
- D. Order Defendant to take all steps necessary to cancel any federal, state or local business registrations, including corporate name registrations and dba filings, that include the BROTHERS Marks or amend those registrations to names that do not include the BROTHERS Marks or any trademarks confusingly similar thereto, and to remove any references to any business registrations, including corporate names and dba filings, that include the BROTHERS Marks;

- E. Award Plaintiff all statutory damages, attorneys' fees and other relief available pursuant to VA. CODE ANN. §§ 59.1-92.13;
- F. Declare this case exceptional under 15 U.S.C. § 1117 and award Plaintiff costs and reasonable attorneys' fees; and
- G. Grant Plaintiff such and other further relief that the Court deems just and equitable.

Respectfully Submitted,

Dated: June 7, 2018

/s/ Christine Williams

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